PATHMANATHAN A KRISHNAN A

v.

MOHAMAD REDUAN HJ ASLI & ANOR

HIGH COURT MALAYA, KUALA LUMPUR B
NOOR AZIAN SHAARI J
[CIVIL SUIT NO: S7-21-47-2004]
6 JULY 2009

POLICE: *Disciplinary proceedings - Dismissal - Role of head of* C
department - Whether there was non-compliance of reg. 36 Public Officers (Conduct and Discipline) Regulations 1993 - Effect thereof

PUBLIC SERVANTS: *Dismissal - Role of head of department -* D
Whether there was non-compliance of reg. 36 Public Officers (Conduct and Discipline) Regulations 1993 - Effect thereof

The plaintiff was dismissed from the police force. He commenced this action against the defendants to nullify his dismissal order. Prior to his dismissal, he had a restriction order made against him under s. 4A(1) of the Emergency (Public Order and Prevention of E
Crime) Ordinance, 5 of 1969 which had been followed with a suspension order. He claimed that the suspension order was irregular due to the absence of relevant documents and that the Head of Department ('HOD') did not comply with reg. 36 of the Public Officers (Conduct and Discipline) Regulations 1993 F
('Regulations').

Held (dismissing plaintiff's claim):

(1) Regulation 36(1) of the Regulations was very clear. Once there G
was a restriction order, the HOD must apply for a copy of it, submit the order to the disciplinary authority ('DA') and the DA forthwith suspend the officer from the exercise of his duties. Those were the steps prior to suspension that must be complied with. Regulation 36(2) required the HOD to forward H
a report to the DA with a recommendation stating which of the four punishments stated therein should be meted out. Regulation 37(1) required the DA to consider the report and the recommendation of the HOD. There was no requirement that any of the documents listed by the plaintiff must be made I
available to him. So long as the report and the recommendation

of the HOD were considered, there was no reason for the court to interfere with the decision of the DA under reg. 37(1). (paras 11, 12, 13, 14, 19 & 20)

(2) The restriction order made against the plaintiff was submitted to the DA that subsequently ordered the suspension. Regulation 36(1) empowered the DA to suspend an officer from the exercise of his duties. The power to suspend appeared mandatory in respect of an officer who had an order of detention, supervision, restricted residence, banishment or deportation made against him. The whole idea was to keep such officer away from his job until such time as the punishment was meted out. It followed therefore that the suspension order was not related or connected to the disciplinary procedure that had been properly carried out. The purpose of the suspension order was to stop the plaintiff who had a restriction order from exercising his duties pending the determination of the punishment to be imposed by the DA. Even if the procedure for the suspension was irregular, it did not invalidate the punishment imposed under reg. 36(2). (paras 21, 22, 23 & 24)

(3) The punishment by the DA could not be held to be invalid just because the suspension order was being questioned. In *Selvaraj Ponniah v. Suruhanjaya Perkhidmatan Awam Malaysia & Anor*, the detention order was the basis of the disciplinary proceedings yet the Federal Court held that the DA made a valid order to dismiss the appellant from service notwithstanding that the validity of the detention order was in question. In the present case, it was only the suspension order that was said to be irregular. (para 26)

Case(s) referred to:

Selvaraj Ponniah v. Suruhanjaya Perkhidmatan Awam Malaysia & Anor [2007] 6 CLJ 245 FC ***(refd)***

Legislation referred to:

Emergency (Public Order and Prevention of Crime) Ordinance, 5 of 1969, s. 4A(1)

Public Officer's (Conduct and Discipline) Regulations 1993, regs. 36(2), 37(1), 38(g)

For the plaintiff - M Manoharan; M/s M Manoharan & Co
For the defendants - Shamsul Bolhassan; AG's Chamber

Reported by Usha Thiagarajah

JUDGMENT

Noor Azian Shaari J:

[1] The plaintiff ("P") Pathmanathan s/o Krishnan filed this suit against the two defendants ("D1" and "D2"), Mohamad Reduan bin Haji Asli and the Government of Malaysia respectively for the following reliefs:

(a) Suatu deklarasi bahawa Perintah Sekatan bertarikh 13.12.2001 adalah batal dan tidak sah dan salah di sisi undang-undang;

(b) Suatu deklarasi bahawa pembuangan kerja plaintif oleh defendan-defendan adalah salah di sisi undang-undang, batal dan tidak sah dan tiada sebarang kesan dan/atau akibat;

(c) Suatu deklarasi bahawa plaintif adalah masih seorang anggota polis dalam perkhidmatan Polis DiRaja Malaysia;

(d) Suatu perintah bahawa suatu akuan diambil bagi menentukan semua tunggakan gaji, emolumen-emolumen, kemudahan-kemudahan dan lain-lain bayaran yang plaintif berhak menerima secara sah di sisi undang-undang;

(e) Gantirugi am bagi pembuangan kerja plaintif;

(f) Faedah atas jumlah penghakiman pada suatu jangkamasa dan suatu kadar yang difikir patut dan wajar oleh Mahkamah Yang Mulia ini;

(g) Kos; dan

(h) Apa-apa relif lain dan/atau selanjutnya yang difikir patut dan wajar oleh Mahkamah Yang Mulia ini.

[2] When the case came up for hearing on the date fixed for trial, the P withdrew prayer (a) and the parties agreed not to call any witnesses but to proceed by submissions only.

[3] The brief undisputed facts of the case is as follows:

(1) 13 December 2001	–	Perintah Sekatan against the P under s. 4A(1) of the Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969.
	–	For a period of two (2) years beginning 17 December 2001.
	–	Pages 4-9 of bundle B.

(2) 29 December 2001	–	Letter signed by Dato' Dell Akhbar Khan, Acting Senior Assistant Commissioner 1 as the Deputy Chief Police Officer Kuala Lumpur informing the P that he was suspended (interdicted/"gantung kerja").
	–	Pages 16-17 of bundle B.
(3) 2 January 2002	–	Letter of appointment of the Lembaga Tatatertib under reg. 28 of the Public Officers (Conduct And Discipline) Regulations 1993 to consider and make a decision in a disciplinary matter.
	–	Signed by Dato' Dell Akhbar Khan.
	–	Page 6 of bundle C.
(4) 8 January 2002	–	Letter of appointment of D1 as the Chairman of the Disciplinary Board.
	–	Signed by Zainal Rashid bin Adnan, Pegawai Turus Tatatertib for and on behalf of Chief Police Officer, Kuala Lumpur.
	–	Pages 4 of bundle C.
(5) 23 March 2002	–	Letter to P informing P that he was dismissed under reg. 38(g) of the Public Officer's (Conduct and Discipline) Regulations 1993.

[4] The P contends that "Di dalam kes-kes pembuangan kerja bagi seseorang kakitangan Kerajaan proses membuat keputusan boleh dicabar dan bukannya mencabar keputusan itu sendiri."

[5] The P advanced four reasons to support his claim that the dismissal effected by the disciplinary board is wrong in law, void and does not have any effect due to defective procedure. The reasons are:

(1) Tiada perintah gantung kerja oleh Pihak Berkuasa Tatatertib; A

(2) Ketiadaan beberapa dokumen-dokumen menunjukkan proses membuat keputusan oleh Defendan-Defendan adalah cacat-padah;

(3) Ketiadaan rayuan dalam mitigasi sebelum hukuman dikenakan B ke atas Plantif; dan

(4) Terdapat satu lagi Perintah Tahan Kerja.

[6] During submission, the plaintiff's counsel abandoned the third (3rd) ground as there is no provision for mitigation and the C fourth (4th) ground as well as it was considered irrelevant.

[7] So now, the court only has to consider the first and the second grounds.

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[8] I will first deal with the second (2nd) ground ie, "Ketiadaan beberapa dokumen-dokumen menunjukkan proses membuat keputusan oleh defendan-defendan adalah cacat-padah."

[9] The P claims that the following documents were not made E available:

(1) The Head of Department's letter asking for the Perintah Sekatan.

(2) The Head of Department's letter to disciplinary board F forwarding the Perintah Sekatan to show that it was done in a hurry;

(3) Report by the Head of Department with the P's Record of Service; and

G

(4) The recommendation of the Head of Department.

[10] Regulation 36(2) and reg. 37(1) of the Public Officers (Conduct and Discipline) Regulations 1993 state as follows:

36 (1) ... (not applicable) H

(2) The Head of Department shall forward a report to the appropriate Disciplinary Authority that has the power to impose a punishment of dismissal or reduction in rank together with the record of service of the officer, and shall recommend whether the officer should: I

A (a) be dismissed or reduced in rank;

(b) be imposed with any punishment other than the punishment of dismissal or reduction in rank;

(c) have his service terminated in the public interest; or

B (d) not be imposed with any punishment,

depending on the extent the officer has brought disrepute to the public service.

C 37 (1) Where, after considering the report and the recommendation of the Head of Department forwarded in accordance with regulation 33 or 36, the appropriate Disciplinary Authority is of the opinion:

(a) that the officer should be dismissed or reduced in rank, D the Disciplinary Authority shall forthwith impose the appropriate punishment;

(b) that the officer should not be dismissed or reduced in rank but should be imposed with a lesser punishment, the Disciplinary Authority shall impose on the officer E such lesser punishment as it deems fit and proper; or

(c) that the officer should not be imposed with any punishment, the Disciplinary Authority shall so decide.

F **[11]** Regulation 36(2) requires the Head of Department to forward a report to the disciplinary authority with a recommendation which of the four punishments should be meted out.

[12] Regulation 37(1) requires the disciplinary authority to consider the report and the recommendation of Head of G Department.

[13] No where is it stated that there is a requirement that any of the documents listed by the P must be made available to the P.

H **[14]** So long as the report and the recommendation of the Head of Department are considered for which of the punishments which should be imposed, there is no reason for the court to interfere with the decision of the discplinary board under reg. 37(1).

I **[15]** The first ground (1st) relied on by the P is that there is no perintah gantung kerja (suspension/interdiction order) by the disciplinary board.

[16] The P contends that by virtue of reg. 36 of the Public Officers (Conduct and Discipline) Regulations 1993 the Head of Department "hendaklah membuat empat perkara penting iaitu":

(1) apply to obtain the Perintah Sekatan;

(2) upon receipt of such order must forward it to the disciplinary authority;

(3) send a report to the disciplinary authority together with the P's record of service; and

(4) recommend the punishment that should be imposed on the P.

[17] The P further states that since all the four steps are not complied with, the suspension order is bad and therefore the punishment of dismissal meted out is also bad. However, the counsel for the P was not able to provide any authority on this point.

[18] Regulation 36(1) states as follows:

> 36 (1) Where:
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> (a) an order of detention, supervision, restricted residence, banishment or deportation has been made against an officer; or
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> (b) an order which imposes on the officer any form of restriction or supervision, whether with bond or otherwise, has been made against an officer,
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> under any law relation to the security of the Federation or any part thereof, prevention of crime, preventive detention, restricted residence, banishment, immigration, or protection of women and girls, the Head of Department shall apply for a copy of the order from the order from the appropriate authority. Upon receipt of a copy of such order, the Head of Department shall immediately submit it to the appropriate Disciplinary Authority that has the power to impose a punishment of dismissal or reduction in rank, and the appropriate Disciplinary Authority shall forthwith suspend the officer from the exercise of his duties.

[19] This regulation is very clear, once there is a perintah sekatan ("restricted residence" order) a Head of Department must:

(1) apply for a copy of it;

(2) submit the order to the disciplinary authority; and

(3) the disciplinary authority should forthwith suspend the officer from the exercise of his dates (interdiction/sekatan kerja).

[20] These are the steps prior to the suspension which must be complied with. As such the P's contentions in (1), (2) and (3) is correct but (4) is not relevant to the suspension but mandatory for the punishment that would be meted out as provided under reg. 36(1).

[21] In this case before me, there was a Perintah Sekatan under s. 4A(1) of the Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 (letter of 29 December 2001 pp 16-18 of B) and it was submitted to the disciplinary authority that ordered the suspension (gantung kerja) which is mandatory once a restricted residence order is made.

[22] Regulation 36(1) empowers the disciplinary authority to suspend an officer from the exercise of his duties. This power to suspend appears to be mandatory in respect of an officer who has had an order of "detention, supervision, restricted residence, banishment or deportation" made against him. The whole idea is to keep such officer away from his job until such time as the punishment is meted out.

[23] Therefore, the suspension order is not related or connected to the disciplinary procedure which in this case had been properly carried out procedurally.

[24] I am of the considered opinion, since the purpose of the suspension order is to stop the P who had restricted residence order against him from exercising his duty pending the determination of the punishment to be imposed by the disciplinary authority, even if the procedure for the suspension is irregular, which in this case I do not agree, it does not invalidate the punishment imposed under reg. 36(2).

[25] In the Federal Court case of *Selvaraj Ponniah v. Suruhanjaya Perkhidmatan Awam Malaysia & Anor* [2007] 6 CLJ 245 it was held that:

(1) ... Thus, the legal power of the disciplinary authority allowed it to make a valid order to dismiss the appellant from service notwithstanding that the validity of the detention order was in question.

[26] An analogy can be drawn that the punishment aforesaid by the disciplinary authority cannot be held to be invalid just because the suspension order was being questioned (which I repeat, was in fact properly carried out). Further, in the cited case, even though the detention order was the basis of the disciplinary proceeding yet, the Federal Court came to such a decision. In the case before me, it is only the suspension order that is said to be irregular.

[27] Premised on the reasons given aforesaid, I dismissed the P's claim with cost.